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Comptroller Redrafting Franchise Tax Rule 3.584, In Part Addressing Wholesaler/Retailer Definition

As a member of the Business Taxpayer Advisory Group, the Comptroller's Office shares with TTARA preliminary drafts of rules proposals. Once the agency completes this informal process, the rule is then published in the Texas Register for formal public review and comment prior to the agency adopting the rule (sometimes with amendments to address the comments received).

The agency has forwarded to us for informal review a redraft of [Rule 3.584, Margin: Reports and Payments](#). The changes proposed updates the rule to reflect recently passed franchise tax legislation and to incorporate previously stated agency guidance.

Some provisions in the redrafted rule have been the subject on ongoing conversations over the past few days, particularly as it relates to the definition of wholesalers and retailers.

The rule draft includes a new subsection (b)(2)(C)(i) which states: A taxable entity produces the product that it sells if the taxable entity acquires the product and makes modifications to the product that increase the sales price of the product by more than 10%. This, however, is not new language to the rule, as the current rule (d)(3)(b) states in part: "A product is not considered to be produced if modifications made to the acquired product do not increase its sales price by more than 10%." This provision has been in the rule since 2009, and the redraft simply moves it to a different section.

The rule draft also includes a new subsection (b)(2)(C)(ii) which states (ii) A taxable entity produces the product that it sells if the taxable entity manufactures, develops, or creates tangible personal property that is incorporated into, installed in, or becomes a component part of the product that it sells. This language is new to the rule, but it is not new agency policy, which was stated previously in an [August 2015 memorandum from Teresa Bostick](#): *[I]t is clear that when a taxable entity manufactures, develops or creates tangible personal property it is engaged in the production of a good. If the tangible personal property is incorporated into, installed in, or becomes a component part of the final product the taxable entity sells, the taxable entity is considered the producer of the final product the taxable entity sells (i.e., a producer of the "good").*

TTARA is in the process of assessing whether we should offer comments to the rule. If you have any thoughts, comments, or concerns you believe we should pass along to the agency, please contact Dale Craymer by either email at dcraymer@ttara.org or at (512) 472-8838. If we receive a substantial number of concerns, we may hold a conference call early next week so we may relay comments to the agency on a timely basis.

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